

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

MERCANTILE TRUST COMPANY

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU-8137

Decision No. CU

1986

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$3,305.23, was presented by MERCANTILE TRUST COMPANY, based upon debts assertedly due from an enterprise intervened by the Government of Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Claimant corporation has submitted copy of a Certificate of Authority to commence business granted Mercantile Trust Company National Association by the Comptroller of the Currency on December 24, 1964. An officer of the corporation has certified that prior to this conversion to a national bank, claimant was a state bank. The record reflects that this status existed at all times pertinent to this claim, until the said date of December 24, 1964. Further, an officer of the corporation has certified that 99 per cent of its stock was owned by United States nationals. The Commission holds that claimant is national of the United States within the meaning of Section 502(1)(B) of the Act.

This claim is based upon fees for acting as Agent and Depositary for bonds issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana, Cuba.

The record discloses that the properties of the Association of the Religious Community of the Company of Jesus of Bethlehem College were intervened by the Government of Cuba on May 3, 1961. This organization does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, claimant is entitled to file claim based upon debts due from an intervened enterprise.

(See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105,

25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

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Claimant has presented an itemized statement of its fees and expenses, totalling \$3,305.23. However, only the items amounting to \$1,583.12, incurred prior to the date of intervention have been considered.

Accordingly, it is concluded that claimant suffered a loss in the amount of \$1,583.12 within the meaning of Title V of the Act as a result of the intervention of the property of the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana, Cuba by the Government of Cuba on May 3, 1961.

The portion of the claim based upon debts of the Association assertedly arising subsequent to the date of intervention of said Association are not compensable under the Act and accordingly are denied.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from May 3, 1961, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that MERCANTILE TRUST COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Five Hundred Eighty-Three Dollars and Twelve Cents (\$1,583.12) with interest thereon at 6% per annum from May 3, 1961 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUN 19 1968

Leonard v. B. Butler

Leonard v. B. Butler, Plaintiff

Theodore Jaffe

Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)